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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **JAN 22 2010**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

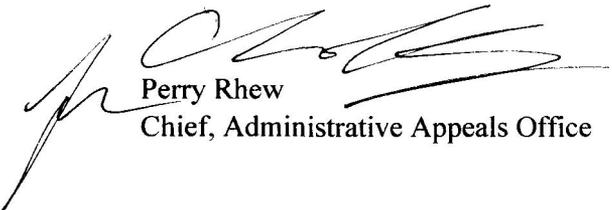
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen mother.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated December 5, 2006.

On appeal, counsel for the applicant asserts that the applicant's U.S. citizen mother is experiencing extreme hardship due to separation from the applicant. *Statement from Counsel on Form I-290B*, dated December 30, 2006.

The record contains a statement from counsel on Form I-290B; medical documentation for the applicant's mother; statements from acquaintances of the applicant's mother; a copy of the applicant's mother's naturalization certificate; a statement from the applicant's mother, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or

of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant entered the United States without inspection in or about February 2002. He remained until October 2005. Accordingly, the applicant accrued over three years of unlawful presence in the United States. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his mother on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel asserts that the applicant's U.S. citizen mother is experiencing extreme hardship due to separation from the applicant. *Statement from Counsel on Form I-290B* at 1. Counsel states that the applicant's mother is seeking medical and psychological treatment due to separation from the applicant. *Id.*

The applicant submits documentation to show that his mother received medical treatment in Mexico during which she was diagnosed with severe depression and prescribed Prozac. *Medical Documentation for the Applicant's Mother*, dated September 23, November 23, and December 23, 2006, and January 23, 2007.

An acquaintance of the applicant's mother, [REDACTED] attests that the applicant's mother is enduring emotional hardship due to separation from the applicant, and that she is always sad and talks about how much she misses him. *Statement from* [REDACTED] dated March 19, 2007. [REDACTED] states that the applicant's mother has traveled to Mexico to see a doctor due to her

deteriorating health and due to the fact that medical services are cheaper there. *Id.* at 1. [REDACTED] notes that the applicant's mother visits the applicant when she's in Mexico, and that the applicant pays for his mother's medical care. *Id.* [REDACTED] further reports that the applicant sends money to his mother in the United States to support her. *Id.*

Another acquaintance of the applicant's mother, [REDACTED], states that the applicant's mother is experiencing significant emotional hardship due to separation from the applicant. *Statement from [REDACTED]*, dated March 17, 2007. He explains that he has taken the applicant's mother to Mexico to see a doctor due to her sadness over separation from the applicant. *Id.* at 1.

The applicant's mother explained that the applicant provided her with support while he was residing in the United States. *Statement from the Applicant's Mother*, dated October 21, 2005. She stated that the applicant would be unable to find employment in Mexico, and that his father would be unable to help him there. *Id.* at 1. She stated that she will find it difficult to support herself without the applicant's help. *Id.* She expressed that she is suffering emotional hardship due to separation from the applicant. *Id.* She noted that she fears for the applicant's safety in Mexico due to recent gang violence. *Id.*

Upon review, the applicant has not established that his mother will suffer extreme hardship if he is prohibited from entering the United States. The applicant has not shown that his mother will suffer extreme hardship should she relocate to Mexico to maintain family unity. The record shows that the applicant's mother is experiencing significant emotional hardship due to separation from the applicant, and that she has been diagnosed with depression for which she has been prescribed Prozac. Yet, should the applicant's mother join him in Mexico, she would not have to endure the separation that is the alleged source of her depression.

Further, the applicant's mother receives medical care from a doctor in Mexico. Should she continue to experience depression in Mexico, the record suggests that she may continue to receive care from her current physician. [REDACTED] reported that the applicant pays for his mother's medical care in Mexico, thus it is assumed that he can continue to do so should the need remain.

In her 2005 statement, the applicant's mother indicated that the applicant would have difficulty finding employment in Mexico. However, more recent evidence indicates that the applicant currently pays for his mother's medical care, and he sends funds to her in the United States. Thus, it is evident that the applicant has employment or a source of income that is sufficient to meet his and at least a portion of his mother's needs in the United States or Mexico. Further, the applicant has not provided any financial documentation for himself or his mother, or explained whether his mother has economic resources of her own. The applicant's mother is presently 43-years-old. The applicant has not shown that his mother is unable to work to meet her needs without his assistance. Accordingly, the applicant has not shown that his mother will experience significant economic challenges should she relocate to Mexico.

It is noted that the applicant's mother is a native of Mexico. Thus, it is assumed that she would not face the challenges of adapting to an unfamiliar language or culture should she return there. The

applicant's mother indicated in October 2005 that she feared a rise in gang activity in Mexico that posed a threat to safety. However, the applicant has not provided any documentation to support this assertion, or shown that he and his mother would be compelled to reside in a high crime area should they live in Mexico. The applicant has not asserted any other elements of hardship to his mother should she relocate to Mexico.

Based on the foregoing, the applicant has not submitted sufficient evidence or explanation to show that his mother will experience extreme hardship should she reside in Mexico.

The applicant has not shown that his mother will experience extreme hardship should she remain in the United States without him. The applicant's mother and her acquaintances expressed that she will endure emotional hardship if she remains separated from the applicant. However, the brief statements from counsel, the applicant's mother, and the applicant's mother's acquaintances do not distinguish her emotional challenges from those commonly experienced when family members reside apart due to inadmissibility.

The AAO has carefully examined the medical documentation provided for the applicant's mother. While the applicant's mother has been diagnosed with severe depression and she has been prescribed Prozac, the record lacks a report or evaluation from a medical professional providing probative information about her illness, treatment and prognosis, or indicating that her condition would be exacerbated by continued separation from the applicant or by her relocation to Mexico. The applicant has not shown by a preponderance of the evidence that his mother's emotional hardship can be distinguished from that commonly experienced when parents reside apart from their children due to inadmissibility.

Federal court and administrative decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The applicant's mother indicated that the applicant provides financial support for her and that she will face financial difficulty if he does not return to his employment in the United States. As noted above, the record indicates that the applicant currently pays for his mother's medical care, and he sends funds to her in the United States. Thus, it is evident that the applicant's mother is continuing to receive financial assistance from the applicant. Also noted above, the applicant has not provided any financial documentation for himself or his mother, or explained whether his mother has economic resources of her own. The record does not show that the applicant's mother is unable to work, or that she has unusual economic needs that require the applicant's assistance. Accordingly,

the applicant has not shown that his mother will experience significant economic challenges should she remain in the United States without him.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his mother will experience extreme hardship, whether she joins him in Mexico or remains in the United States. Thus, the applicant has not established that denial of the present waiver application “would result in extreme hardship” to a qualifying relative, as required for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.